



California Fair Political Practices Commission

March 6, 1989

David G. Lopez
414 Cirby Oaks Court
Roseville, CA 95678

Re: Your Request for Advice
Our File No. A-89-029

Dear Mr. Lopez:

You have requested advice regarding the provisions of Proposition 68 and Proposition 73, which were passed by the voters in the June 1988 State Primary Election, amending the Political Reform Act.^{1/}

QUESTIONS

1. As an outside fundraising consultant, can you be reimbursed by a candidate's or officeholder's campaign committee for overhead expenses such as telephone toll charges and parking, and for expenses directly in connection with fundraising events, such as invitations, stamps, supplies, mileage?

2. Is an outside fundraising consultant acting as an intermediary for contributions received by a campaign committee under the following circumstances:

a. If the contributions are mailed to the consultant's address?

b. If the contributions are sent to the consultant's address, and the consultant's address is the official mailing address of the campaign committee?

c. If the contributions are retrieved by the consultant at a post office box established by the campaign committee?

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

d. If the contributions are handed to the consultant at a committee fundraiser?

e. If the consultant is an officer of the campaign committee (e.g., treasurer, assistant treasurer, secretary or finance chairperson)?

3. May contributors be requested to mail contribution checks directly to a state officeholder's Capitol or district office?

CONCLUSIONS

1. A candidate's or officeholder's controlled campaign committee may not reimburse an outside fundraising consultant for expenses.

2a. through d. A fundraising consultant is an intermediary for a contribution any time the contributor mails a contribution addressed to the consultant by name or physically hands a contribution to the consultant for the purpose of having the consultant deliver the contribution to the candidate or committee. If the contributor mails a contribution addressed to the candidate or to the campaign committee, the fundraising consultant is not an intermediary regardless of the address used by the contributor and regardless of whether the consultant ultimately retrieves and transmits the contribution to the campaign committee.

2e. Section 84302.5 specifically excludes candidates and committee treasurers who receive contributions from the definition of an "intermediary." It does not mention other officers or persons who act as assistant treasurers. Therefore, a fundraising consultant who is the designated committee treasurer is not an intermediary for contributions received by the committee.

3. The Act does not prohibit the mailing of contributions to a legislator's Capitol or district office. Contributors may be asked to mail contributions to those addresses. The Act does prohibit personal delivery of contributions in the State Capitol.

ANALYSIS

Proposition 68 and Proposition 73, passed by the voters in the June 1988 Primary Election, added contribution limitations and other new requirements and restrictions on funds received and spent by candidates, officeholders, their controlled committees and committees which make contributions to candidates and officeholders.

Reimbursement of Campaign Consultants

Section 85201 as added by Proposition 73 requires state and local candidates and officeholders to establish a campaign contribution account in California. It also states that all campaign expenditures shall be made from the account. (Section 85201(e).) According to the Act's original provisions, an expenditure is made on the date payment is made or on the date the goods or services are received, whichever is earlier. (Section 82025.) Therefore, a candidate's or officeholder's campaign committee may not reimburse a consultant's expenses because, at the time the consultant made the payment or at the time the goods or services were received, the expenditure was not made out of the campaign account as required by Section 85201(e).

Disclosure of Intermediaries

With regard to disclosure of intermediaries, Section 84302.5 states:

A person is an intermediary for transmittal of a contribution if he or she delivers to a candidate or committee a contribution from another person unless such contribution is from the person's employer, immediate family or an association to which the person belongs. No person who is the treasurer of the committee to which the contribution is made or is the candidate who controls the committee to which the contribution is made shall be an intermediary for such a contribution.

As stated in the conclusion, an individual is acting as an intermediary when the contributor gives a contribution to the individual for the purpose of having him or her deliver the contribution to the candidate or campaign committee. If the contributor has no reason to know that the contribution is being delivered by another person (i.e., it is addressed to the candidate or campaign committee), the person who receives the mail, or retrieves it in the case of a post office box, is not acting as an intermediary.

With regard to committee treasurers, Section 84302.5 specifically excludes the treasurer of a committee to which a contribution is made from the definition of "intermediary." It does not address other officers of a committee nor does it mention assistant treasurers. Therefore, any other officer or assistant committee treasurer could potentially be an intermediary for contributions. Any person who will be designated as a committee treasurer should be aware that he or she must verify under penalty of perjury the accuracy of all committee campaign statements (Section 81004), and that he or she is responsible for maintaining the committee's accounts and records (Section 84104, Regulation 18427).

Contributions Mailed to Legislator's Capitol or District Office

The Act does not prohibit the mailing of contributions to a legislator's Capitol or district offices. Personal delivery of contributions in the State Capitol or in any state building or any building for which the state pays the majority of the rent, other than a legislative district office, is prohibited. (Section 84309.)

Please note that the Commission is in the process of adopting regulations and developing proposed legislation clarifying many of the provisions of Propositions 68 and 73, including the issue of reimbursements and the new intermediary definition. In addition, several lawsuits have been filed challenging various provisions of Proposition 73. Therefore, the answers provided in this letter may be subject to change.

If you have additional questions, please do not hesitate to contact me at (916) 322-5662.

Sincerely,

Diane M. Griffiths
General Counsel



By: Carla Wardlow
Political Reform Consultant

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January 10, 1989

Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Gentlemen:

After speaking to Commission staff by telephone, I was encouraged to direct questions regarding new campaign reform regulations to the Commission for a written response. I would appreciate advice on the following matters:

REIMBURSEMENTS BY CAMPAIGN COMMITTEE

As an outside fundraising consultant, am I allowed to invoice the campaign for consulting services provided, **as well as** payment of expenses necessary to complete my job as a fundraiser?

Specifically, may I invoice for the following charges as they apply to fundraising:

- o telephone toll charges
- o parking
- o miscellaneous charges necessary to produce fundraising events (e.g., invitations, stamps, supplies, mileage)?

ACTING AS AN INTERMEDIARY FOR THE CAMPAIGN

As the fundraising consultant to the campaign, must I be listed on the campaign finance reports as an intermediary for the campaign if campaign contributions are mailed to my address (if my address **is not** the campaign's official mailing address)?

Am I listed as an intermediary if the contributions are sent to my address if my address **is** the campaign's official mailing address?

Am I listed as an intermediary if the contributions are sent to a post office box established by the campaign as its mailing

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address and I retrieve them?

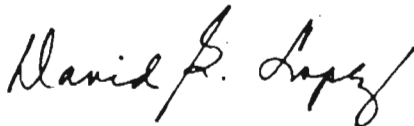
Is it legal for the campaign to request that contributions be mailed directly to either the senator's Capitol or district office?

If I am physically handed a check (e.g., at a fundraising event), am I considered an intermediary?

If I am an official officer of the campaign committee -- specifically, treasurer, assistant treasurer, secretary, or finance chairperson -- and I receive contributions, am I considered an intermediary?

Because of the immediacy of this matter, I would request a written response as soon as possible. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "David G. Lopez". The signature is written in dark ink and is positioned above the typed name and address.

DAVID G. LOPEZ
414 Cirby Oaks Court
Roseville, CA 95678
(916) 782-9195

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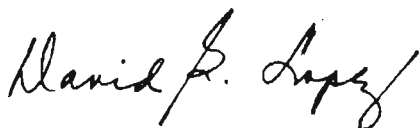
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Roseville, CA 95678
(916) 782-9195



California Fair Political Practices Commission

January 20, 1989

David G. Lopez
414 Cirby Oaks Court
Roseville, CA 95678

Re: Letter No. 89-029

Dear Mr. Lopez:

Your letter requesting advice under the Political Reform Act was received on January 13, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Jeanne Pritchard

Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

by jph

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